

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 142

June 25, 1958

### APPEALS: WAIVER STATUTORY REQUIREMENTS

#### Syllabus:

Statutory requirements respecting proper appeals may not be waived by the Board.

After claims for refunds were disallowed, taxpayer paid the amounts set out in the Notices of Proposed Assessments. Intending to appeal to the Board of Equalization, taxpayer's representative through error, filled out claims for refund and mailed them to the Franchise Tax Board on August 30, 1954. Because of this error the action on the claims for refund became final on September, 7, 1954, without an appeal being taken thereon. It was subsequently determined that the foreign tax involved qualified for credit under the Personal Income Tax Law and taxpayer was entitled to a refund. Advice is requested as to whether the claims for refund of August 30 may be treated as an appeal.

The Personal Income Tax Law requires appeals to be filed within 90 days following Board action on the claim (Section 19057), and to be addressed to the State Board of Equalization (Section 19059). In the present case the claim, if treated as an informal appeal, is neither timely nor properly addressed, the board by statute may not waive the taxpayer's failure to comply with the statute.

Taxpayer should be advised, however, that there are two alternatives open to him. He may either file suit under section 19082 of the Personal Income Tax Law or file a legislative claim with the State Board of Control. The former method is expensive. Inasmuch as the equities favor the taxpayer, he may wish to seek a legislative claim.